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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,708	04/30/2001	Michael J Evelegh	RDMA-002XX	3616

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EXAMINER

GITOMER, RALPH J

ART UNIT	PAPER NUMBER
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1651

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DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/830,708

Applicant(s)
Evelegh

Examiner
Ralph Gitomer

Art Unit
1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 3, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-22 is/are pending in the application.
- 4a) Of the above, claim(s) 15-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

The priority documents received 5/5/2003 and the amendment received 6/3/2003 have been entered and claims 1-6, 8-14 are considered here. Priority is granted to 8/6/1999. The amendments to the drawing and specification are acceptable.

In view of the amendments to the claims and arguments presented, the rejections of record under 35 USC 112, second paragraph, are hereby withdrawn.

This application contains claims 15-22 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

In view of the amendments to the claims and arguments presented, the rejections of record of under 35 USC 102(b) and (e) over Shamsuddin and Krepinsky are hereby withdrawn. However, see the new rejections following over the same references, required due to amendments to the claims.

The rejection of record of claims 1 and 8 under 35 USC 102(b) over Lee is maintained.

Applicant's arguments filed 6/5/2003 have been fully considered but they are not persuasive.

Applicant argues that the determination of Lee is based on changes in color, whereas the present invention determines absolute color. The Shamsuddin references do not employ determining hue angle or chroma. Krepinsky relies on a single wavelength determination.

It is the examiner's position regarding Lee, that the present claims are not based on absolute color, they are based on spectrophotometrically measuring hue angle or chroma which reads on most types of standard spectrophotometric determinations including wavelength change or reflectance.

Shamsuddin spectrophotometrically reads color changes due to chromogenic reactions.

Krepinsky (6,187,591) teaches in the abstract, determining a coloration produced at about 560-590 nm by the sample. The present claims do not specify any wavelength ranges.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of each of Shamsuddin (4,857,457, 5,162,202 and 5,348,860) in view of Lee (WO 90/00251).

5 The teachings of the Shamsuddin and Lee references are seen in the previous Office Action of 1/14/2003.

 The claims differ from the Shamsuddin references in that they have now been newly amended to recite determining the hue angle or chroma of a developed color.

10 Lee teaches on pages 16 and 17 reflectance spectrophotometry to determine chromaticity and hue for the same function as presently claimed in methods of the same type as Shamsuddin.

 It would have been obvious to one of ordinary skill in this art at the time the invention was made to employ the type of hue
15 angle determination of Lee in the method shown by Shamsuddin because determining chroma and reflectivity are standard and old in this art and although not specifically recited in the Shamsuddin references, such determination would have the expected result, determining a chromogenic reaction.

20

 Claims 1-6, 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Krepinsky (5,416,025) in view of Lee (WO 90/00251).

25

The teachings of the Krepinsky and Lee references are seen in the previous Office Action of 1/14/2003.

The claims differ from the Krepinsky reference in that they have now been newly amended to recite determining the hue angle or chroma of a developed color.

Lee teaches on pages 16 and 17 reflectance spectrophotometry to determine chromaticity and hue for the same function as presently claimed in methods of the same type as Krepinsky.

It would have been obvious to one of ordinary skill in this art at the time the invention was made to employ the type of hue angle determination of Lee in the method shown by Krepinsky because determining chroma and reflectivity are standard and old in this art and although not specifically recited in Krepinsky, such determination would have the expected result, determining a chromogenic reaction.

Claims 1-6, 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Krepinsky (6,187,591) in view of Lee (WO 90/00251).

The teachings of the Krepinsky and Lee references are seen in the previous Office Action of 1/14/2003.

The claims differ from the Krepinsky reference in that they have now been newly amended to recite determining the hue angle or chroma of a developed color.

Lee teaches on pages 16 and 17 reflectance spectrophotometry to determine chromaticity and hue for the same function as presently claimed in methods of the same type as Krepinsky.

5 It would have been obvious to one of ordinary skill in this art at the time the invention was made to employ the type of hue angle determination of Lee in the method shown by Krepinsky because determining chroma and reflectivity are standard and old in this art and although not specifically recited in Krepinsky, such determination would have the expected result, determining a
10 chromogenic reaction.

Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Shamsuddin (5,162,202) in view of Lee (WO 90/00251).

15 The teachings of the Shamsuddin and Lee references are seen in the previous Office Action of 1/14/2003.

The claims differ from the Shamsuddin reference in that they have now been newly amended to recite determining the hue angle or chroma of a developed color.

20 Lee teaches on pages 16 and 17 reflectance spectrophotometry to determine chromaticity and hue for the same function as presently claimed in methods of the same type as Shamsuddin.

25 It would have been obvious to one of ordinary skill in this art at the time the invention was made to employ the type of hue angle determination of Lee in the method shown by Shamsuddin

because determining chroma and reflectivity are standard and old in this art and although not specifically recited in Shamsuddin, such determination would have the expected result, determining a chromogenic reaction. Regarding a calibration plaque, no
5 function of such a plaque is claimed and it reads on any color instructions or chart generally provided with spectrophotometers. Employing a computer to analyze results does not lend patentability to a method where no analysis or results are seen.

10 Claims 12 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

15 In claim 12 ~~the~~ a system ~~renders~~ renders the claim indefinite. Further, ~~the~~ lightness ~~is~~ is queried.

Applicant's arguments filed 6/5/2003 have been fully considered but they are not persuasive.

20 Applicant argues that the system is defined in the claim to comprise the components listed.

It is the examiner's position that system does not define the type of claim and therefor renders the claim indefinite.

The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

5 This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required. Please amend the specification regarding the claimed priority documents.

10 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15 A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened
20 statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the
25 statutory period for reply expire later than SIX MONTHS from the date of this final action.

Serial No. 09/830,708
Art Unit 1651

-9-

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm.

5 The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone numbers for this Art Unit are before final (703) 872-9306 and after final (703) 872-9307. Any inquiry

10 of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at

15 www.uspto.gov and click on the button Patent Electronic Business Center for more information.



Ralph Gitomer
Primary Examiner
Group 1651

**RALPH GITOMER
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